

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Fox Television Stations, Inc.

Earth Station call sign E970411

File No. EB-08-SE-709

NAL/Acct. No. 200932100062

FRN # 0005795067

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: June 3, 2009**Released: June 5, 2009**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Fox Television Stations, Inc. (“Fox Television”), licensee of earth station call sign E970411, apparently liable for a forfeiture in the amount of twelve thousand eight hundred dollars (\$12,800) for operating its station without Commission authority, in apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“Act”)¹ and Section 25.102 of the Commission’s Rules (“Rules”),² and for failing to file a timely renewal application for its earth station in apparent willful violation of Section 25.121(e) of the Rules.³

II. BACKGROUND

2. On September 26, 1997, WWOR-TV, Inc. was granted a license to operate a Ku-band satellite earth station under call sign E970411, and that license was subsequently assigned to Fox Television on October 31, 2000.⁴ Under the terms of its license, Fox Television’s authorization for its earth station expired on September 26, 2007. After Fox Television became aware that it failed to file a renewal application for the station and that its license to operate the station had expired, on August 13, 2008, it filed a request with the International Bureau for special temporary authority (“STA”) to operate the earth station pending grant of an application for a new earth station license.⁵ On August 18, 2008, Fox Television submitted a new license application, and on August 21, 2008, Fox Television filed an amended license application.⁶ On September 23, 2008, the International Bureau granted Fox Television’s

¹ 47 U.S.C. § 301.

² 47 C.F.R. § 25.102.

³ 47 C.F.R. § 25.121(e).

⁴ See File Nos. SES-ASG-20000918-01719 and SES-MOD-20030205-00194.

⁵ See File No. SES-STA-20080813-01058.

⁶ See File No. SES-LIC-20080818-01065; see also, File No. SES-AMD-20080821-01080.

application for a new license for earth station E970411, as amended, and dismissed the pending STA request as moot.⁷

3. Because it appeared that Fox Television operated its earth station, call sign E970411, without authorization, the International Bureau referred this case to the Enforcement Bureau (“Bureau”) for investigation and possible enforcement action. On October 6, 2008, the Bureau’s Spectrum Enforcement Division (“Division”) issued a letter of inquiry (“LOI”) to further investigate whether Fox Television had operated its earth station beyond the expiration of its license.⁸

4. In its November 4, 2008 Response to the LOI,⁹ Fox Television admitted that it had failed to timely renew its earth station license and that it continued to operate Station E970411 without Commission authority through August 13, 2008. According to Fox Television, its engineering staff believed that renewals had been sought for the license by Fox Television in-house counsel. Thus, Fox Television claims that it was unaware that its license for the earth station had expired.¹⁰ Fox Television states that it first became aware that its license had expired on August 13, 2008,¹¹ at which time it took immediate steps to request an STA to operate its station pending the submission and grant of a new license application.¹²

III. DISCUSSION

5. Section 301 of the Act and Section 25.102(a) of the Rules prohibit the use or operation of any apparatus for the transmission of energy or communications or signals by an earth station except under and in accordance with a Commission granted authorization.¹³ Section 25.121(c) of the Rules provides that the license term for an earth station is specified in the instrument of authorization.¹⁴ Section 25.121(e) of the Rules requires the licensee of an earth station to file its renewal application “no earlier than 90 days, and no later than 30 days, before the expiration date of the license.”¹⁵ Absent a timely filed renewal application, an earth station license automatically terminates at the end of the license period.¹⁶

6. Under the terms of its license, Fox Television’s authorization to operate its earth station, call sign E970411, expired on September 26, 2007. As a Commission licensee, Fox Television is charged with the responsibility of knowing and complying with the terms of its authorization, the Act and the

⁷ See, *Satellite Communication Services Information*, Public Notice, Report No. SES-01071, (International Bureau, September 24, 2008).

⁸ Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Dianne Smith, Vice President, Fox Television Stations, Inc. (October 6, 2008) (“LOI”).

⁹ Letter from Dianne Smith, Vice President, Legal and FCC Compliance, Fox Television Stations, Inc., to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (November 4, 2008) (“LOI Response”).

¹⁰ LOI Response at 1, 3.

¹¹ *Id.* at 1.

¹² *Id.*, Declaration of Dianne Smith at ¶¶ 7-11

¹³ 47 U.S.C. § 301; 47 C.F.R. § 25.102(a).

¹⁴ 47 C.F.R. § 25.121(c).

¹⁵ 47 C.F.R. § 25.121(e).

¹⁶ 47 C.F.R. § 25.161.

Rules.¹⁷ Fox Television admits that it has operated earth station E970411 without Commission authority after September 26, 2007.¹⁸ By operating earth station E970411 without Commission authorization, Fox Television apparently violated Section 301 of the Act and Section 25.102(a) of the Rules. Fox Television also acted in apparent violation of Section 25.121(e) of the Rules by failing to file a timely renewal application for the earth station.

7. Section 503(b) of the Act¹⁹ and Section 1.80(a) of the Rules²⁰ provide that any person who willfully or repeatedly fails to comply with the provisions of the Act or the Rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Act, the term “willful” means that the violator knew that it was taking the action in question, irrespective of any intent to violate the Commission’s Rules, and “repeated” means more than once.²¹ Based on the record before us, it appears that Fox Television’s violations of Section 301 of the Act and Section 25.102(a) of the Rules were willful and repeated, and its violation of Section 25.121(e) of the Rules was willful.

8. In determining the appropriate forfeiture amount, Section 503(b)(2)(E) of the Act directs us to consider factors, such as “the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”²² Having considered the statutory factors, as explained below, we propose a total forfeiture of \$16,000.

9. Section 1.80(b) of the Rules sets a base forfeiture amount of \$10,000 for operation of a station without Commission authority and \$3,000 for failure to file required forms or information.²³ As the Commission has held, a licensee’s continued operations without authorization and its failure to timely file for authority to extend its operations constitute separate violations of the Act and the Rules and warrant the assessment of separate forfeitures.²⁴ Accordingly, we herein propose separate forfeiture amounts for Fox Television’s separate violations.

¹⁷ See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7437 (2004) (“*Discussion Radio*”). See also *Side By Side, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 898, 901 (Enf. Bur., Spectrum Enf. Div. 2008) (“*Side By Side*”); *La Carpa Corp.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2744, 2745 (Enf. Bur., Spectrum Enf. Div. 2007) (forfeiture paid) (“*La Carpa*”); *Lazer Broadcasting Corp.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 8710, 8712 (Enf. Bur., Spectrum Enf. Div. 2005) (forfeiture paid) (“*Lazer*”); *Shared Data Networks, LLC*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 18184, 18186 (Enf. Bur., Spectrum Enf. Div. 2005) (forfeiture paid) (“*Shared Data Networks*”).

¹⁸ LOI Response at 3.

¹⁹ 47 U.S.C. § 503(b).

²⁰ 47 C.F.R. § 1.80(a).

²¹ See 47 U.S.C. § 312(f)(1) & (2). See also *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (the definitions of willful and repeated contained in the Act apply to violations for which forfeitures are assessed under Section 503(b) of the Act).

²² 47 U.S.C. § 503(b)(2)(E). See also 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures; *Forfeiture Policy Statement*, Report and Order, 12 FCC Rcd 17087, 17110 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

²³ 47 C.F.R. § 1.80(b).

²⁴ See *Discussion Radio*, 19 FCC Rcd at 7438. See also *Side By Side*, 23 FCC Rcd at 898; *La Carpa*, 22 FCC Rcd at 2745; *Lazer*, 21 FCC Rcd at 8712; *Shared Data Networks*, 20 FCC Rcd at 18186.

10. Consistent with recent precedent, we propose the full base forfeiture amount of \$3,000 for Fox Television's failure to timely file a renewal application for its earth station.²⁵ Additionally, we propose a forfeiture in the amount of \$5,000 for Fox Television's unauthorized operation of its earth station, call sign, E970411 for the approximately eleven month period between September 26, 2007, the license expiration, until at least August 13, 2008, the date of the STA request.²⁶ In proposing a forfeiture of \$5,000 for the unauthorized operation, we recognize that the Commission considers a licensee who operates a station with an expired license in better stead than a pirate broadcaster who lacks prior authority, and thus downwardly adjust the \$10,000 base forfeiture amount accordingly.²⁷ Thus, we propose an aggregate forfeiture of \$8,000 (\$3,000 for failure to timely file a renewal application and \$5,000 for unauthorized operation).

11. This \$8,000 forfeiture amount is subject to adjustment, however. In this regard, we consider Fox Television's size and ability to pay a forfeiture.²⁸ To ensure that forfeiture liability is a deterrent, and not simply a cost of doing business, the Commission has determined that large or highly profitable companies, such as Fox Television, could expect the assessment of higher forfeitures for violations.²⁹ Given Fox Television's size and ability to pay a forfeiture, we conclude that an upward adjustment of the base forfeiture amount to \$16,000 is appropriate.³⁰

12. We do find, however, that a downward adjustment of the proposed forfeiture from \$16,000 to \$12,800 is warranted because Fox Television made voluntary disclosures to Commission staff and undertook corrective measures after learning of its violations but prior to any Commission inquiry or

²⁵ See, e.g., *Lockheed Martin Corporation*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 2980, 2982 (Enf. Bur., Spectrum Enf. Div. 2009); *Discovery World Television, Inc.*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 2883 (Enf. Bur., Spectrum Enf. Div. 2009) ("*Discovery World*"); *Bloomsburg University of Pennsylvania*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 9357, 9359 (Media Bur., Audio Div. 2008); *Sunflower Communications, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 7657, 7659 (Media Bur., Audio Div. 2008); *Santa Cruz Educational Broadcasting Foundation*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC 21033, 21035 (Media Bur., Audio Div. 2007) (all proposing the full base forfeiture amount of \$3,000 against broadcast station licensees for failure to file timely renewal applications).

²⁶ Section 503(b)(6) of the Act, 47 U.S.C. § 503(b)(6), prohibits assessment of a forfeiture for a violation that occurred more than one year before the issuance of a NAL, but this section does not bar consideration of prior conduct in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory period. See *Globcom, Inc. d/b/a Globcom Global Communications*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19903 (2003), *forfeiture ordered*, 21 FCC Rcd 4710 (2006); *Roadrunner Transportation, Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-72 (2000).

²⁷ See *Discussion Radio*, 19 FCC Rcd at 7438 (proposing a \$5,000 forfeiture against a broadcaster for operating its broadcast station beyond the expiration of its license); *Side by Side*, 23 FCC Rcd at 900 (proposing a \$5,000 forfeiture against an earth station operator for operating beyond the expiration of its license); *La Carpa*, 22 FCC Rcd at 2746 (proposing a \$5,000 forfeiture against an earth station operator for operating beyond the expiration of its license); *Lazer*, 21 FCC Rcd at 8712 (proposing a \$5,000 forfeiture against an earth station operator for operating beyond the expiration of its license).

²⁸ News Corporation, parent company of Fox Television, reported second quarter 2008 revenues from its United States broadcast television networks at \$18 million. See *News Corporation Earnings Release for the Quarter Ended December 31, 2008*, News Release, News Corporation, February 5, 2009.

²⁹ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17099-100.

³⁰ See *Discovery World*, 24 FCC Rcd at 2883; *Walgreen Co.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 16,045, 16,048 (Enf. Bur., Spectrum Enf. Div. 2007) (forfeiture paid).

initiation of enforcement action.³¹

IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act³² and Sections 0.111, 0.311 and 1.80 of the Rules,³³ Fox Television Stations, Inc. **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twelve thousand eight hundred dollars (\$12,800) for willful and repeated violation of Section 301 of the Act and Section 25.102(a) of the Rules and for willful violation of Section 25.121(e) of the Rules.

14. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,³⁴ within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Fox Television Stations, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

15. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Fox Television Stations, Inc., will also send electronic notification on the date said payment is made to Deborah Broderson, at Deborah.Broderson@fcc.gov, and to Ricardo Durham, at Ricardo.Durham@fcc.gov.

16. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

³¹ See *Discovery World*, 24 FCC Rcd at 2883; *Petracom of Texarkana, LLC*, Forfeiture Order, 19 FCC Rcd 8096, 8097-8098 (Enf. Bur., 2004). See also, *Side By Side*, 23 FCC Rcd at 901; *Lazer*, 21 FCC Rcd at 8712; *Journal Broadcast Corp.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 18211, 18214 (Enf. Bur., Spectrum Enf. Div., 2005) (forfeiture paid).

³² 47 U.S.C. § 503(b).

³³ 47 C.F.R. §§ 0.111, 0.311 and 1.80.

³⁴ 47 C.F.R. § 1.80.

17. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

18. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by first class mail and certified mail return receipt requested to Fox Television Stations, Inc., Attention: Dianne Smith, Vice President, Legal and FCC Compliance, 444 North Capitol Street NW, Suite 740, Washington DC 20001.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau